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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JAMES R. PAGAN, Defendant and Appellant.	A124877 (Lake County Super. Ct. No. CR-915290)

James R. Pagan appeals from a judgment entered upon a plea of guilty to first degree murder. His court-appointed counsel has filed a brief raising no legal issues and asking this court to independently review the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

PROCEEDINGS BELOW

By information filed on October 2, 2008 in the Lake County Superior Court, appellant was charged with first degree murder (Pen. Code, § 187, subd. (a).),[1] mayhem (§ 203), attempted murder (§§ 664/187, subd. (a)), corporal injury on a child (§ 273d, subd. (a)), and assault with a deadly weapon (§ 245, subd. (a)(1)). In connection with all but the last offense, it was alleged that appellant had personally used a dangerous weapon; namely a knife (§ 12022, subd. (b)(1)); as to the last three offenses it was alleged appellant inflicted great bodily injury (§ 12022.7, subd. (a)).

[1] All statutory references are to the Penal Code.

Four days later, appellant submitted a written plea of not guilty to all of the charged offenses and also not guilty by reason of insanity. On October 14, 2008, the court issued an order appointing clinical psychologists John W. Podboy and Thomas L. Cushing, and doctor of osteopathy Douglas M. Rosoff, who is board certified in psychiatry, for the purposes of personally examining appellant, filing with the court written reports of the result of such examinations, together with their conclusions, and giving testimony before the court as to those matters.

On April 13, 2009, after the court admonished him about his constitutional rights regarding his plea of not guilty by reason of insanity, appellant waived a jury trial on that claim and entered a plea of guilty to first degree murder and assault with a deadly weapon. Appellant additionally admitted the enhancement for use of a deadly weapon. (§ 12022, subd. (b)(1).) Appellant's pleas were entered on the minutes of the court, as were other provisions of the negotiated disposition, including dismissal of three offenses charged in the information, as well as appellant's waiver of time for sentencing.

Three days later, on April 16, defense counsel sought to reopen the sanity hearing in order to secure the opinion of a fourth doctor, Albert J. Kastl. The court granted the request and received an 18-page report from Dr. Kastl dated July 3, 2008, and a supplemental statement dated April 15, 2009 clarifying a statement made in his earlier report. Also on April 16, 2009, the court found appellant was not insane at the time he committed his criminal acts.

At the sentencing hearing held on May 11, 2009, the court denied probation and sentenced appellant to 25 years to life for the offense of first degree murder, plus an additional year for the deadly weapon enhancement, for a total indeterminate term of 26 years to life. As to the offense of assault with a deadly weapon, the court imposed a consecutive three years, the midterm.

Appellant filed timely notice of appeal on May 12, 2009. The notice states that the appeal follows a guilty or no contest plea and is based on the sentence or other matters occurring after the plea, and that the appeal is authorized by rule 8.304 of the California Rules of Court and section 1237.5.

FACTS REGARDING THE OFFENSE[2]

On March 21, 2008, Officers John Gregore and Joseph Dutra were dispatched by the Lake County Sheriff's Department to 16322 Firethorn Road in Hidden Valley, on a report of a stabbing. When close to that address, they saw medical officers treating a young person. Two other individuals were shouting to them and pointing to a house on Sugarbush Court, saying, "He's down there" and was wearing an orange shirt. When they entered the open door to the house, appellant's parents, Ernest and Sheryl Pagan, pointed to a sliding glass door at the back of the house, where the officers found appellant sitting in a chair and wearing an orange and white shirt. After they handcuffed and *Mirandized* him, and asked whether he had stabbed the person they had seen, appellant said, "I might have, I'm not sure." As the two officers were escorting him out of the house, appellant spontaneously stated what sounded like "it's all Carol's fault," and "something about not raping or its not rape, I even called the police once and they said it wasn't rape."

While conducting a consensual search of the residence, Officer Gregore found a pair of corduroy pants with two spots of dried or drying blood stains. Appellant's parents told the officer that appellant had a history of bipolar disorder and experienced manic states. He had obtained several college degrees and held down a regular jobs until about 10 years before when his mental health started causing him problems. At some point he moved in with his parents and is now unable to work and on disability. Both parents described appellant as having a violent nature, though doctors had told them he was more of a danger to himself than to others. Though he had attempted suicide in the past, his parents did not believe he would be dangerous to others.

Appellant's mother, Sheryl Pagan, told Officer Gregore that at about 4:00 p.m. that day, when his father returned home from work, appellant got a soda from the kitchen and went to the back porch, where he smoked a cigarette. He then entered the house and

[2] The facts are perforce those elicited at the preliminary hearing held on September 3, 2008, as no trial on the offenses was conducted. Three witnesses testified for the People at the preliminary hearing; none were called by appellant.

argued with his parents. After he spit on the couch and cursed his parents, he went to his room, put on tan colored pants, a white shirt and tennis shoes, and then left the house. A short while later, his mother said, she went outside to see whether appellant was smoking marijuana, as she suspected, but did not find him. She then heard screaming from the direction of the intersection of Firethorn and Sugarbush Court. Going there, she found a young girl lying injured alongside the road. At some point, she looked back at her house and saw appellant standing nearby. When medics arrived, she went back to the house and found appellant inside.

Appellant's father, Ernest Pagan, confirmed the mother's story up until the point she said she went outside to look for appellant. Ernest stayed inside and saw his son return to the house several minutes later through the garage and go to the bathroom where he took a shower. Appellant frequently took several showers a day as it helped calm him down. Ernest said he became concerned when appellant said something like, "I think I just killed someone, I think I just stabbed someone." Appellant got dressed and went onto the porch. His father said he went out the front door and saw a black male and female walking up and down the street looking into homes. One of them asked Ernest if had seen anyone run into his house, and he replied that his son just walked in, but he did not see anyone running.

Appellant's parents commented to Officer Gregore about appellant's statement about it being "Carol's fault." Sheryl told the officer appellant had talked with her about being molested when he was eight years old by a girl, apparently "Carol," who was two years older than him. Sheryl said appellant "held a great deal of anger towards Carol as a result." Gregore never found out who Carol was or the truth of appellant's story.

While Officer Gregore was interviewing appellant's parents, his partner, Officer Dutra, went back to the crime scene. Dutra told Gregore he found what he described as a "steak knife" lying in the road. Since he did not have a piece of tape or other means of marking it he used some available orange spray paint to identify it, which he thought necessary because so many law enforcement officers and civilians had arrived at the scene. The knife was wooden handled, approximately nine inches long, and a reddish

substance Dutra believed to be blood was on the blade. Dutra also identified the girl found on the ground as Tessa Faith Walker, who was 10 or 11 years old. Dutra said Sergeant Perry, who was also at the scene, had found a second victim with a stab wound named Kristin Walker, who was Tessa Walker's older sister.

Sergeant David Perry, who testified that he arrived at the scene at about the same time as Officers Gregore and Dutra, saw a kitchen knife, a pair of sandals, and an article of clothing laying in the road near where Tessa Walker had been found on the ground. At some point a 12- or 13-year-old girl he later identified as Kristin Walker approached Perry and said, "I was stabbed too." After he lifted up her shirt and saw a puncture wound about three-quarters of an inch long on her side, and blood, Perry summoned medical personnel.

Not knowing how severely Kristin Walker had been wounded, and fearing this might be the last time she could identify her assailant, Perry contacted Officer Dutra who was then with appellant at his house, and asked him to bring appellant to the scene, which was about 100 feet away. Dutra placed appellant about 8 or 10 feet from the ambulance where Kristen had been placed. Perry testified that, when she sat up to look at appellant, "her eyes got wide" and she said, "That's him, that's the one who stabbed me and Tessa."

David Garzoli, then a lieutenant with the Lake County Sheriff's Department, also investigated the stabbings of Tessa and Kristin Walker. Tessa, who died of her wounds, was born on November 2, 1996, making her 11 years old at the time she was murdered. Kristin, who recovered from her stab wound, was born on May 4, 1993, making her 14 years old at the time of the crime. Tessa and Kristin were taken by ambulance to Redbud Community Hospital. Tessa died on the way. When interviewed at the hospital, Kristin, who suffers from Down Syndrome, told the police she and her sister were walking down the road by themselves when they were approached by a man who began stabbing both of them with a knife for no apparent reason.

Lieutenant Garzoli, who supervised the service of a search warrant and search of appellant's residence, found a set of steak knives individually placed in slots in a block of wood on the kitchen counter. All but one of the slots was filled with a knife, and the

knives all matched the one found in the road near Tessa Walker. An autopsy of Tessa Walker showed defensive wounds to her hands and slashing type wounds to her throat, chin and face, and a single puncture wound to the lower part of her heart, for a total of 35 sharp force injury wounds. The cause of death was multiple sharp force injuries.

FACTS RELATING TO SANITY

As indicated, after appellant entered his plea the court appointed Drs. Podboy, Cushing, and Rosoff "to investigate or interview [appellant] and render opinions as to his state of insanity, both at the time of the offense and now." However, a fourth doctor, Dr. Albert J. Kastl, had previously evaluated appellant at the request of defense counsel to address issues of mental competence pursuant to section 1368 and sanity. As will be seen, Dr. Kastl's lengthy report was provided the court only after it initially determined appellant was not insane at the time of his offense, in support of a request for reconsideration of that determination. However, Dr. Kastl's lengthy confidential psychological report dated July 3, 2008 was provided to Drs. Podboy, Cushing and Rosoff.

With respect to appellant's sanity at the time of his offense, Dr. Kastl's July 3, 2008 report concludes as follows: "Based on my analysis of the history and current test results, [appellant] does evidence major psychiatric disorder, namely schizo-affective disorder. The illness itself fluctuates in intensity, and the analysis of the events of March 21, 2008, reflects the intensity of the voices, delusional ideation, and mental confusion. To some extent, the voices are attenuated by ongoing conversation, as in our work together in June. However, the underlying disorder remains and is evident on examination."

Dr. Podboy's October 24, 2008 report describes Dr. Kastl's report as "extremely thorough" and refers to it frequently. However, though he considered the report "very helpful," he disagreed with Dr. Kastl's finding of "a GAF [Global Assessment of Functioning] [score] of 21which refers to, in part, an inability to function in almost all areas." What Podboy found "most striking" about appellant's crimes was his "utter remorselessness." Pointing out that appellant was by his own admission angry, had

contemplated killing his parents, and then chanced upon two children, one of whom he killed and then attempted to mutilate or injure the other. Appellant "then returned home, and his consciousness of guilt was reflected in his behavior of asking for post-event advice, upon ridding himself of his clothes which had blood on them, and then calmly smoking cigarettes, having sodas and making phone calls. [¶] Once again, he evidenced no sign of an acute psychotic state, rather, he presented as an angry individual who appears more satisfied currently in a structure of his confinement than he has been for many years." According to Dr. Podboy, appellant's crimes "were, in criminological terms, instrumental with an explicit and future goal."

Dr. Rosoff's report of November 6, 2008 similarly concluded that appellant could be deemed to have a "Schizoaffective Disorder" and that "[h]is psychiatric problems have caused severe deterioration in his capacity to develop coping skills and weather traumatic events from childhood and require continued care by mental health professionals," but that these factors "do not rise to a threshold necessary for finding of legal insanity." "In sum," according to Dr. Rosoff, appellant "was criminally responsible for the tragic events of March 21st, 2008."

Dr. Cushing's report of November 10, 2008 also agreed appellant suffered a "mental disorder, either Bipolar Disorder or Schizoaffective Disorder," and he too believed appellant is "in need of continued psychiatric treatment and medication." However, like Drs. Podboy and Rosoff, Dr. Cushing concluded that appellant "knew and understood the nature and quality of his acts on March 31 [*sic*], 2008. In addition, his account of the index offense and review of the available documents also reflected [that appellant] knew and understood that his acts were morally and legally wrong at the time of the alleged commission of the crimes. As such, the data supports a finding that [appellant] was legally sane at the time of the commission of the crimes on March 31 [*sic*], 2008."

As we have said, on April 13, 2009, the court relied on the foregoing reports of Drs. Podboy, Rosoff and Cushing to conclude appellant was not insane when he committed his offenses. Three days later, on April 16, defense counsel requested that the

court reopen the sanity hearing and reconsider its determination of sanity on the basis of the 18-page report of Dr. Kastl dated July 3, 2008, as well as a written statement from Dr. Kastl clarifying his conclusion regarding appellant's sanity. The court granted the request and received Dr. Kastl's report and supplemental statement in evidence. Dr. Kastl's clarification, set forth in a one-paragraph letter dated April 15, 2009, states that in regard to the conclusion of his July 3, 2008 report (set forth, *ant*e, at pp. 6-7) "it is my opinion that [appellant] has been suffering from schizo-affective disorder. He has a significant mental disease that affects his ability to think rationally and to plan his actions. [Appellant] is unable to appreciate the nature and quality of his actions. He is unable to evaluate the moral basis or understand the 'right or wrong' in relation to his actions."

After considering Dr. Kastl's report and supplemental statement, the court stated and concluded as follows: "In reviewing all four doctors' reports, it can't be argued that [appellant] doesn't have a significant mental disorder. I believe all four doctors indicate he has a schizo-affective disorder and possibly a bipolar condition. However, I'm in agreement with the opinions of Drs. Rosoff, Podboy, and Cushing that the acts that [appellant] committed were not delusional and that he did know right from wrong when he committed them. [¶] Dr. Kastl has an opinion that is contrary to that; however, in reading his entire report, he doesn't seem to be substantially in disagreement with the other three doctors, in fact [Dr. Kastl] found that [appellant] was competent and kind of left his conclusion as to sanity up in the air until he [submitted his supplemental statement], indicating that he now feels that [appellant] was insane. However, that opinion is not persuasive to the Court, and I will find that [appellant] was not insane at the time that he committed the acts that he pled guilty to."

DISCUSSION

With respect to the offenses to which appellant pled guilty, the scope of reviewable issues is restricted to matters based on constitutional, jurisdictional, or other grounds going to the legality of the proceedings leading to the plea; guilt or innocence are not included. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 895-896.)

Appellant's change of plea complied with *Boykin v. Alabama* (1969) 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122, and no post plea issues regarding the offenses to which appellant pled guilty are presented.

Appellant also freely, voluntarily and knowingly waived his right to a jury determination as to whether he was not guilty by reason of insanity.

In assessing the trial court's determination that appellant was not insane at the time he committed his offenses, we must view the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is evidence which is reasonable, credible and of solid value—such that a reasonable trier of fact could find appellant was not insane at the time he committed his offenses. (*People v. Johnson* (1980) 26 Cal.3d 557, 562, 576.) "In reviewing sufficiency of the evidence, we view the evidence in the light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Lewis* (1990) 50 Cal.3d 262, 277.)

Applying the foregoing criteria, we are compelled to conclude that the evidence supported the judgment of the trial court that appellant was not insane at the time he committed his offenses. Additionally, appellant was at all times represented by competent counsel who guarded his rights and interests.

The sentence imposed is authorized by law.

Our independent review having found no arguable issues that require briefing, the judgment of conviction and sentence are affirmed.

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Kline, P.J.

We concur:

_____
Haerle, J.

_____
Lambden, J.